



DEPARTMENT OF STATE INSTRUCTION

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3074

FOR DC USE ONLY

NO. A-190 August 31, 1953

3074

SUBJECT: Comparison of Japanese-American Relationships under FCN and GATT

TO: The American Embassy, TOKYO.

Two officials of the Japanese Embassy, on instructions from their Government, have asked the Department certain questions regarding the GATT and the FCN treaty; and they have requested that the Department forward information regarding these questions to you in order that you may explain the matter to the Foreign Office (particularly Mr. Oda). Essentially the Japanese wish to know what GATT rights the treaty gives Japan, and what the differences are between the rights Japan has under the treaty and those she would have if a party to GATT.

As previously explained, and as the Japanese now apparently well understand, Article XIV of the treaty in conjunction with the second sentence of Article XXI(3) entitles Japan to GATT rates of duty during such time as Japan's non-membership in the GATT is not of her own choosing. Under the treaty Japan is entitled to receive full most-favored-nation treatment in customs matters irrespective of her involuntary non-participation in GATT. Under such treatment Japan is protected against discriminatory tariff rates in the U.S., except for such minor cases, for example, as Cuba which are expressly covered in Article XXI. However, the U. S. remains free, so far as Japan is concerned, to increase rates at will and to set them to any level the U.S. sees fit provided such modification results in no discrimination against Japan.

As a party to GATT, however, Japan would have certain rights in addition to most-favored-nation treatment. Notably, parties to GATT are entitled to receive specified rates of duty embodied in the schedules of other parties, and these specified rates are protected against upward change except under limited circumstances and fixed procedures, which in some cases include consultation or negotiation with all interested contracting parties. If Japan becomes a party to GATT she would obtain all of these rights. For examples of provisions laying down such procedures see Article II par. 6, Article XVIII par. 3, Article XXIII, Article XXVIII and, especially, Article XIX, pars 2 and 3. Moreover, under GATT the U.S. would become committed to Japan

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to several matters other than rates of duty not covered by
of relevant provisions of GATT are Article II, par. 1(b)
(elimination of certain subsidiary import charges), Article VI
(antidumping duties), Article VIII pars. 1 and 2 (customs
Article XI par. 1 (general principle of elimination of
duties).

is apparently puzzled as to why, in connection with the pro-
cession of Japan to GATT, the U.S. is planning to go through
public notice and hearing pursuant to section 4 of the Trade Agree-
ment. Japanese goods already enjoy the GATT rates and under the treaty
such rates pursuant to the most-favored-nation clause,
provisions with Japan regarding individual U.S. duties are contem-
plated. It is considered that these domestic procedures should be
provided for in the U.S. schedules to the General Agreement.
independent of Japan's treaty rights. They are relevant
to Japan's participation in GATT, since under the relation-
ship with respect to the rates in the schedules. The
schedules are to change, or to be the basis for a change in,
treatment of Japanese goods but are merely a legal proceeding
on account of the additional rights which would be given.

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Japan with respect to several matters other than rates of duty not covered by the treaty. Examples of relevant provisions of GATT are Article II, par. 1(b) second sentence (binding of certain subsidiary import charges), Article VI (anti-dumping and countervailing duties), Article VIII pars. 1 and 2 (customs formalities), and Article XI par. 1 (general principle of elimination of quantitative restrictions).

The Japanese are apparently puzzled as to why, in connection with the prospective temporary accession of Japan to GATT, the U.S. is planning to go through the procedures of public notice and hearing pursuant to section 4 of the Trade Agreements Act, since Japanese goods already enjoy the GATT rates and under the treaty will have a right to such rates pursuant to the most-favored-nation clause, and since no negotiations with Japan regarding individual U.S. duties are contemplated at this time. It is considered that these domestic procedures should be followed since Japan will be accorded the additional rights outlined above with regard to the rates provided for in the U.S. schedules to the General Agreement. These procedures are independent of Japan's treaty rights. They are relevant only to the U.S. becoming committed to Japan under GATT, since under the relationship established by Japan's participation in GATT Japan would become entitled to such additional rights with respect to the rates in the schedules. The procedures are not calculated to change, or to be the basis for a change in, the actual customs treatment of Japanese goods but are merely a legal proceeding under the U.S. statute on account of the additional rights which would be given to Japan under GATT.

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